**Court No. 2**

**In the High Court of Uttaranchal at Nainital**

**Appeal Against Award No. 134 of 2002.**

The New India Assurance Company Ltd.
Branch Office, Kashipur,
through its Senior Divisional Manager,
Divisional Office, Opposite Judgee Court,
Nainital Road, Haldwani, District- Nainital
..... Appellant.

**Versus**

(1) Smt. Renu Sharma W/o late Shri Anirudh Sharma.
(2) Master Gaurav Sharma aged about 7 yrs
S/o late Shri Anirudh Sharma,
(3) Master Saurabh Sharma aged about 5 yrs.,
S/o late Shri Anirudh Sharma,
Residents of Village- Madhowala Tanda, Thana Rehar,
Tehsil Nagina, District – Bijnor,
.....Respondents/ Claimants

(4) Rajeev Kumar Karnwal S/o Shri Roshan Lal Karnwal,
R/o Begum Sarai Thana- Afzalgarh Tehsil- Nagina,
District – Bijnor- Owner of Bus No. UP- 20D- 4686.
(5) Sampuran Singh S/o Sri Pratap Singh
Resident of Village Kaner, District- Bageshwar.
(6) Sarvan Singh S/o Sri Sampuran Singh,
(7) Janral Singh S/o Sri Sampuran Singh,
(8) Mangal Singh S/o Sampuran Singh,
Respondent No. 5 to 8 are the residents of Village-
Madhowala Tanda, Thana – Rehar, Tehsil- Nagina ,
District- Bijnor (Regd. Owner of Tractor No. UP- 20B-0450)

**Sri D.K. Sharma & Sri T.A. Khan, learned counsel for the appellant.**
**Sri Dharam Veer, learned counsel for the respondents 1 to 3.**

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**Dated: 20th Aug., 2004.**

**Hon'ble P.C. Verma, J.**
**Hon'ble B.S. Verma, J.**

This appeal has been preferred by the appellant under Section 173 of the Motor Vehicles Act against the judgment and order dated 30.04.2002 passed by Motor Accident Claims Tribunal/ Addl. District Judge (I Fast Track

Court), Kashipur, District- Udham Singh Nagar (*hereinafter referred to as the Tribunal)* in Motor Accident Claim Case No.11of 2001.

Brief facts giving rise to this appeal are that on 13.04.2000 at about 3.00 p.m. while the claimants reached near P.W.D. colony ahead the Kunda crossing, the bus No. UP20D-4686 which was being driven rashly and negligently and was going from Kashipur to Jaspur hit the Tractor Trolley bearing registration No. UP 20-B-0450 due to which Anirudh Sharma received several injuries and died during medical treatment. At the time of death Anirudh Sharma was aged 35 years and by doing the work of "*Panditai*" he was earning about Rs. 6000/- per month. The bus in question was owned by opposite party No. 1 and was insured with Opp.party No. 2- New India Insurance Company. The aforesaid Tractor Trolley was owned by Opp.party Nos. 3 to 6 and was insured with Opp. party No.7-Oriental Insurance Company. The claimants had filed the claim petition under Section 166/140 of the Motor Vehicles Act for a compensation of Rs. 31,95,000/- on account of death of Sri Anirudh Sharma in the said accident against the opposite parties.

The opposite parties contested the case before the learned Tribunal by filing their written statements separately. On the pleadings of the parties, the learned Tribunal framed the necessary issues.

The learned Tribunal after recording oral and documentary evidence, gave its finding and held that due to rash and negligent driving by the driver of the bus in question, the said bus hit the Tractor Trolley in which Anirudh Sharma received injuries and died during the medical treatment. The Tribunal also held that the bus in

question was insured with New India Insurance Company on the date of accident and allowed the claim petition for grant of Rs.2,75,000/- against the Opp.party No.2- New India Assurance Company alongwith interest at the rate of 9% per annum from the date of claim petition till the date of payment.

The grounds taken by the appellant- New India Assurance Company in this appeal mainly are that the driver of the bus in question was not having a valid driving licence and secondly, that the amount of compensation as awarded is quite exorbitant.

We have gone through the record of the case and find that the learned Tribunal has framed issue No. 2 regarding the driving licence. The Tribunal has dealt with the matter and gave its finding in favour of the claimants. We also find that there is no illegality or infirmity in the order of learned Tribunal. The Tribunal has rightly calculated the amount of compensation keeping in view the income and dependency of the deceased. The law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged as envisaged in sub-section (2) of Section 149 of the Motor Vehicles Act. The Apex Court in case of ***National Insurance Company Ltd. versus Nicolletta Rohtagi and others*** reported in ***2003 (3) T.A.C. 293 (Supreme Court)*** has held that, ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".***

The Apex Court in Case of ***National Insurance Company Limited versus Swaran Singh and others, reported in (2004) 3 S.C.C., 297*** has also held in sub-para (iii) of para 110 that.

> *"(iii) The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub- section (2) (a) (ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."*

Thus, in view of the aforesaid laws laid down by the Apex Court, the appeal filed by the appellant- New India Assurance Company has no force and is liable to be dismissed.

The appeal is dismissed accordingly. The impugned order dated 30.04.2002 is affirmed. No order as to costs.

**(B.S. Verma, J.)** **(P.C. Verma, J.)**

P.Singh